

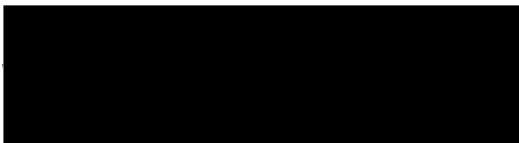


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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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ULLB, 3rd Floor
Washington, D.C. 20536



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prevent clearly unwarranted
invasion of personal privacy.

File: WAC 99 214 51815 Office: California Service Center

Date: APR 27 2001

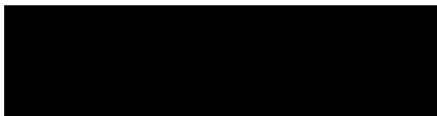
IN RE: Petitioner:
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(iii)

Public Copy

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a tour operator. It seeks the classification of the beneficiary as a marketing coordinator trainee for a period of six months. The director determined that the beneficiary already possessed substantial training and expertise in the proposed field of training. The director also determined that the petitioner had not demonstrated the proposed training is not available in the beneficiary's own country.

On appeal, counsel states that the petitioner does not believe that due consideration was given to all the evidence provided for the advanced training position offered to the beneficiary.

Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(iii), provides classification to an alien having a residence in a foreign country which he or she has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment.

The regulation at 8 C.F.R. 214.2(h)(7) states, in pertinent part:

(ii) *Evidence required for petition involving alien trainee--*(A) *Conditions.* The petitioner is required to demonstrate that:

(1) The proposed training is not available in the alien's own country;

(2) The beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed;

(3) The beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and

(4) The training will benefit the beneficiary in pursuing a career outside the United States.

(B) *Description of training program.* Each petition for a trainee must include a statement which:

(1) Describes the type of training and supervision to be given, and the structure of the training program;

(2) Sets forth the proportion of time that will be devoted to productive employment;

(3) Shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training;

(4) Describes the career abroad for which the training will prepare the alien;

(5) Indicates the reasons why such training cannot be obtained in the alien's country and why it is necessary for the alien to be trained in the United States; and

(6) Indicates the source of any remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training.

(iii) *Restrictions on training program for alien trainee.* A training program may not be approved which:

(A) Deals in generalities with no fixed schedule, objectives, or means of evaluation;

(B) Is incompatible with the nature of the petitioner's business or enterprise;

(C) Is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training;

(D) Is in a field in which it is unlikely that the knowledge or skill will be used outside the United States;

(E) Will result in productive employment beyond that which is incidental and necessary to the training;

(F) Is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States;

(G) Does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified; or

(H) Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

The petitioner's training program requires 18 months for completion. The beneficiary will receive training in direct

consumer and travel trade marketing. The petitioner states that in order to apply U.S. techniques to drive the UK consumer directly to the petitioner, the beneficiary would be required to train at the petitioner's U.S. center of operations. The petitioner explains that the U.S. direct marketing industry is the world leader in methods of promoting new and existing products to the consumer. However, no evidence has been presented that such training does not exist in the beneficiary's home country. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

The record indicates that the beneficiary had been admitted to the United States as an exchange visitor (J-1) on March 29, 1998. She was sponsored by the Association for International Practical Training and received practical training in tourism management and all aspects of a U.S. travel agency operations with Austravel, Inc. This program was for a period not to exceed 18 months. Absent a detailed description of the beneficiary's employment history, the beneficiary may already have substantial training and expertise in the proposed field of training. Consequently, the petition cannot be approved.

The petition cannot be approved for additional reasons. The petitioner states that most of the beneficiary's training will be on-the-job training and she will receive a salary of \$25,000 per year. The petitioner states that the beneficiary will be responsible for office support duties, initiating research and correspondence with airlines, operators, hotels, and other suppliers used by the petitioner, monitoring and development of an in-house data base system, setting up and maintaining files, carrying out all aspects of project related administration and development, etc. The petitioner also states that formal training in a classroom setting will take place one full day per month. The petitioner has not established that the beneficiary will not engage in productive employment. Further, the petitioner has not established that the beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed.

In nonimmigrant visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.